

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ISRAEL IVAN RAMIREZ

RESPONDENT,

**v.
MISSOURI DEPARTMENT OF SOCIAL
SERVICES, CHILDREN'S DIVISION**

APPELLANT.

DOCKET NUMBER WD79297

DATE: July 26, 2016

Appeal From:

Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

David J. Moen, Jefferson City, MO, for respondent.

Gary L. Gardner and James Layton, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

**MISSOURI DEPARTMENT OF SOCIAL
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No. WD79297

Cole County

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

The Missouri Department of Social Services, Children's Division appeals from that portion of a trial court judgment which declared that the Division's definition of "sexual maltreatment" in its Child Welfare Manual is an invalid rule and which authorized Ramirez to prosecute a claim for attorney's fees in accordance with section 536.050.

REVERSED.

Division Two holds:

1. Although the definition of "sexual maltreatment" in the Child Welfare Manual is a statement of general applicability that should have been promulgated as a rule, because the Division made no effort to promulgate the definition as a rule, Ramirez could not file a declaratory judgment action pursuant to section 536.050 to determine the validity of a rule. The question of validity of a rule pursuant to section 536.050 presupposes the existence of a promulgated rule, or at least, a rule that purports to have been promulgated.

2. Where agency action is threatened against a party who is subject to an agency's authority, that party has an adequate remedy at law to review agency action by seeking *de novo* judicial review pursuant to section 536.100(2). Thus, a declaratory judgment action pursuant to section 527.010 will not lie to address a matter which could be raised and resolved pursuant to 536.100(2) unless the underlying administrative agency action must be commenced by the agency and is not commenced within a reasonable time.

Opinion by Cynthia L. Martin, Judge

July 26, 2016

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